
**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

R. S.A. No. 3976 of 2007

Date of decision: 11.12.2007

Nitta Nand and others

...Appellants

Versus

Smt. Kamlesh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. D.S.Bali, Senior Advocate with
Mr. J.P.Sharma, Advocate for the appellants

RAJESH BINDAL, J.

The defendants are in second appeal before this Court against the concurrent findings of fact by both the Courts below whereby suit filed by the respondents/plaintiffs for possession was decreed.

The claim set up by the respondents/plaintiffs was that Ram Chander father-in-law of plaintiff no.1 and grand father of plaintiffs No. 2 to 5 was owner of the suit land alongwith other land with other co-sharers. Gulab Singh husband of plaintiff no.1 and father of plaintiffs No. 2 to 5 predeceased his father Ram Chander. After the death of Ram chander the suit land devolved upon the plaintiffs in equal shares. As the appellants/defendants were stated to be in unauthorized possession of the suit land, the necessity to file the suit for possession arose. Defendants no.1 to 8 suffered a collusive decree in favour defendants No.9 and 10 in a suit titled as Krishan etc. Vs. Devki Nandan, which was stated to be not binding on the plaintiffs in the absence of registration. The suit was contested by the appellants/defendants raising various pleas including that defendants no.1 to 8 were tenants at will under the owners and possessory and ownership rights were transferred by them in favour of defendants No. 9 and 10 vide the judgment and decree as referred to above. On the pleadings

of the parties following issues were framed:-

- “1. Whether the plaintiff is entitled to the possession of the suit land as alleged in the plaint? OPP
2. Whether the suit of the plaintiff is not maintainable?OPD
3. Whether the suit is badly time barred ? OPD
4. Whether the plaintiffs have no cause of action to file the present suit? OPD
5. Whether the defendants no. 9 and 10 are owners of the suit land vide civil court decree passed in civil suit No. 442/93? OPD
6. Whether the defendants are entitled to special costs?OPD
7. Relief’

On appreciation of evidence brought on record in the form of consistent entries in the revenue record, the ownership of the plaintiffs of the suit land was proved. The entries in the revenue record showing the defendants no.1 to 8 as tenants on the suit land with remarks as “BILA LAGAN TASSAWAR MALKIAT KHUD” were also not in continuity. It is also found by learned trial Court that defendants admitted that they were tenants at will under the plaintiffs. The suit land was transferred by way of consent decree by defendants no.1 to 8 in favour of defendants No.9 and 10 wherein the land was exchanged by both the set of the parties stating themselves to be owners thereof.

Once it was admitted case of defendants No. 1 to 8 that they were tenants at will on the property in dispute they did not have any right to dispose of that as owners. In the written statement filed by appellants/defendants no plea regarding adverse possession of the property was raised though this issue was sought to be argued before the Ist Appellate Court, however, the same was not permitted for the reason of lack of pleadings to that effect. Even otherwise the moment appellants/defendants pleads that they are in adverse possession of the property that simply meant that the ownership of some one else is admitted. Even otherwise in the written statement filed, the defendants had pleaded that they were tenants at will. Once they themselves had admitted to be

tenants the plea of adverse possession was totally alien to that.

It is further evident from the issues framed in the suit that no issue regarding plea of adverse possession was framed. To this learned Senior counsel for the appellants stated that it was the duty of the Court to have framed proper issues arising out of the pleadings. Firstly, there is no specific plea regarding the adverse possession in the written statement and secondly even in case where proper issues have not been framed initially, it is the duty of the counsel representing both the parties to bring it to the notice of the Court proper issue which escaped attention. Nothing of this sort was done. Accordingly, such a plea is totally misconceived.

With this material on record this Court is unable to take a view that findings recorded by the learned Courts below are perverse.

No substantial question of law arises in the present appeal and the same is dismissed.

December 11, 2007
Pka

(Rajesh Bindal)
Judge